VERMONT INDEPENDENT POWER PRODUCERS ASSOCIATION

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December 7, 2007

State of Vermont
Public Service Board
114 State Street, 4th Floor
Montpelier, Vermont 05620

Attn: Judith C. Whitney

Re: Public Service Board Workshop re Power Contracts

Dear Sir or Madame,

The Vermont Independent Power Producers Association (VIPPA) appreciates the opportunity to comment on issues relating to the development of a policy to govern independent power producer (also called Qualifying Facility or QF) contracts within the State of Vermont. VIPPA representatives participated in the workshop held on November 7, 2007 at the Public Service Board hearing room. VIPPA noted that the majority of the workshop was devoted to discussions of long-term contracts related to the development of new renewable power projects. VIPPA believes the discussion also should address power purchase agreements from existing renewable projects that do not need nor require long-term contracts in order to be developed (i.e., that already are developed). VIPPA's comments are as follows:

1) **Mandatory Power Purchase Obligation** – On February 2, 2006, the Federal Energy Regulatory Commission (FERC) issued its Revised Regulations Governing Small Power Production and Cogeneration Facilities to accommodate changes to PURPA by the Energy Policy Act of 2005.

   The regulation provides that QFs of 20MW ("Small QF") or smaller remain entitled to the mandatory purchase obligation afforded QFs under PURPA. FERC's regulations provide that Small QFs enjoy a rebuttable presumption that the QF does not have market access to the regional grid. In that instance, the utility that interconnects with the QF continues to have the legal obligation to purchase energy and capacity from tha QF in accordance with the provisions of PURPA. PURPA continues to obligate an interconnecting utility to pay the small QF its avoided costs for such energy and capacity purchases. The interconnecting utility has the right to file with the FERC and attempt to rebut the presumption by showing that the Small QF has market access to the regional bulk transmission grid. Of course, PURPA and FERC's implementing regulations permit the utility to charge for related administrative costs, but requires the utility to compensate the QF for transmission loss avoidance.

The final regulation also provides that facilities of 20MW or smaller shall remain exempt from rate regulation under Sections 205 and 206 of the Federal Power Act. When an existing contract with a facility expires, sales from the facility, whether pursuant to a renewal of the existing contract or pursuant to a new contract will be subject to sections 205 and 206 unless otherwise exempt.

Based upon the above, VIPPA believes that utilities within the State of Vermont have the obligation under PURPA to purchase energy from Small QFs at each utility's avoided cost if the QFs desire to sell their energy and capacity . See 18C.F.R. §292.304(d).. In the instance where utility avoided cost energy rates have not been established, VIPPA believes the utility avoided energy cost should be 100% of the ISO-NE LMP hourly energy rate because, if the utility does not have the need for the hourly energy, it can be delivered into the ISO-NE grid at the prevailing LMP hourly energy rate. .

The recent creation of the Forward Capacity Market ("FCM") in ISO-NE also has quantified the value of capacity attributable to QF facilities located in the ISO-NE territory. Under the FCM system, owners of ISO-NE generating facilities began to receive monthly capacity payments on December 1, 2006 based upon the rated capacity of the subject generating facility (including QF facilities) whether the QF facility is directly connected to ISO-NE grid or interconnected to a local distribution company. Capacity payments now are made separate from energy purchases and represent a value to a project owner in addition to energy produced from a facility. VIPPA believes such capacity payments rightfully belong to QF projects making energy sales under the provisions of PURPA, unless the contractual arrangement specifically provides otherwise. Using the FCM pricing as a proxy for the capacity component of a utility's avoided cost is consistent with the PURPA and FERC's regulations. This is a reasonable way to ensure that the QF is fairly compensated and the utility pays no more than its avoided costs. Alternatively, the interconnecting utility could purchase only the QF project energy and the QF owner could receive FCM payments directly from ISO-NE if that is administratively beneficial. This is possible because each generator in the ISO-NE region, including small QF's is registered with ISO-NE, whether or not it has access to the ISO-NE market..

The FERC recently reiterated in Covanta Energy Group, Docket No. EL03-133-000, that "Avoided costs" is defined as the "incremental costs to an electric utility of electrical energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." 18C.F.R. § 292.101(b)(6) (2003). The FERC went on to say that avoided costs were intended to put the utility into the same position when purchasing QF capacity and energy as if the utility generated the electricity itself or purchased the electricity from another source.

2) **Ownership of Renewable Energy Certificates**

The FERC also has issued specific guidance with respect to the ownership of Renewable Energy Credits ("RECs"). In an order dated October 1, 2003, Covanta Energy Group, Docket No. EL03-133-000, the FERC stated that the Commission's avoided cost regulations did not contemplate the existence of RECs and the avoided cost rates for capacity and energy sold under contracts entered into pursuant to PURPA do not convey the RECs, in the absence of an express contractual provision to the contrary.

Presently all New England states, with the exception of Vermont, have renewable portfolio standard ("RPS") programs in effect. QFs that operate within Vermont have the opportunity to qualify for RECs under the specific provisions of various state RPS programs. The RPS qualification criteria differ from state to state. As an example, small hydroelectric facilities (5MW or less) may qualify under the Connecticut RPS program, but all hydroelectric projects are excluded from the Massachusetts RPS program. Similarly, the value of RECs differs from state to state, depending upon the supply/demand balance of RECs in a particular state. Presently, to the extent a Vermont located QF qualifies under another New England states' RPS program, the QF will derive its revenue from a non-Vermont source, independent of energy and capacity sales.

Given the above circumstances, VIPPA believes that REC sales are separate and distinct from energy and capacity sales and that REC revenue constitutes a separate product that belongs to the Small QF project ownerConsequently, VIPPA believes that the Small QF owner is entitled to 100% of any REC revenue derived from an RPS sale.

3) **QF Power Purchase Policies of Other New England States**

Given the existence of the PURPA, the precedent setting FERC decisions regarding Mandatory Power Purchases from QFs of less than 20MW, and FERC policy regarding REC ownership, other New England states have established different state power purchase arrangements to conform to the requirements of PURPA. Specific examples are as follows:

a) ***Connecticut*** – The Connecticut Public Utilities Commission has issued Rate 980 to govern QF sales. Under Rate 980, Connecticut utilities are obligated to purchase energy from QF at 100% of the hourly ISO-NE LMP energy rate. The energy rate is adjusted to reflect the benefit of avoided transmission losses depending upon the interconnection voltage of the QF and the time of delivery (on-peak/off-peak). QFs generally receive the equivalent of 100.5% to 107.13% of the hourly ISO-NE LMP energy rate. QFs also receive 100% of FCM capacity payments. 100% of any REC payments are recorded in the ISO-NE system. The QF owns the RECs and sells the RECs on the open market. A copy of the Rate schedule used by

Connecticut Light and Power Company to implement Rate 980 is attached.

b) ***New Hampshire*** – The vast majority of QF projects in New Hampshire are located within the service territory of Public Service Company of New Hampshire ("PSNH"). PSNH will purchase the energy of any QF within its service territory under a short-term power agreement at 100% of the hourly ISO-NE LMP rate. PSNH also administers the ISO-NE FCM account of the QF, then collects and distributes 100% of the FCM payment to the QF facility. 100% of any REC payments are recorded in the ISO-NE system. The QF owns the RECs and sells the RECs on the open market.

c) **Maine** – Chapter 315 of the Public Utility Commission rules governs QF sales in Maine. Maine is a fully deregulated state. Thus, under their rules, the QF makes energy sales to the Standard Offer Provider (energy supplier) of the interconnecting utility. Chapter 315 provides that the QF will receive 100% of the hourly ISO-NE LMP energy rate. QFs also receive 100% of the FCM capacity payments. 100% of any REC payments are recorded in the ISO-NE system. The QF owns the RECs and sells the RECs on the open market.

   One of VIPPA's members also operates a QF facility in Maine within the service territory of Central Maine Power Company ("CMP"). In that instance, the QF has available a second method by which it may sell the energy and capacity of its facility. The QF may become a member of ISO-NE and, under ISO-NE governance rules, sell its power as an Intermittent Generator into the grid at 100% of the hourly ISO-NE LMP rate. Run-of-river hydroelectric plants qualify as Intermittent Generators. CMP has filed an OATT tariff with ISO-NE as required by FERC Order 888. The CMP OATT tariff has a transmission wheeling out rate of $0.00/kw-yr. from the point of interconnection of the QF (at distribution voltage) to CMP's interconnection with the ISO-NE grid (PTF). CMP assesses a monthly charge of $659.36 to administer the account of the ISO-NE QF account (meter reading and reporting). The QF also receives 100% of the FCM capacity payments. 100% of any REC payments are recorded in the ISO-NE system. The QF owns the RECs and sells the RECs on the open market.

The above examples are not intended to provide a comprehensive list of all New England states' QF purchasing policies. VIPPA does not have access to that information. However, these specific examples show that at least three New England states have adopted policies that conform to the legal requirements of PURPA and the FERC by continuing to pay Small QFs the utility's avoided cost rate.

VIPPA requests that the various parties responsible for setting QF purchasing policy in Vermont consider the above information. As explained above, VIPPA believes that QFs of less than 20 MW located within Vermont are entitled to sell energy and capacity to the interconnecting utility at 100% of the hourly ISO-NE LMP energy rate and the prevailing FCM capacity rate unless the utility has calculated its own avoided cost rates or makes a filing with FERC to rebut the presumption afforded Small QFs and be removed from the mandatory purchase obligation.

If the Public Service Board, as a matter of policy, does not desire the interconnecting utility to purchase power under the requirements of PURPA, then VIPPA suggests that the Public Service Board consider two alternatives. First, utilize the existing structure offered by the Vermont Electric Power Producer, Inc. (VEPPI) to make such short-term purchases at the utility's avoided cost. The second alternative would be to require each Vermont distribution utility to file and maintain an OATT that contains wheeling out rates (from distribution to PTF) similar to the CMP rate ($0.00/kw-yr). In this manner, QFs would be afforded market access to the regional power grid thereby eliminating the obligation of the interconnecting utility to purchase energy from the interconnecting QF under the mandatory purchase obligation of PURPA. Under either of these alternatives, VIPPA believes the QF is entitled to 100% of FCM capacity payments and RECs attributable to the QF facility.

Thank you for your consideration of these comments.

Sincerely,

VERMONT INDEPENDENT
POWER PRODUCERS

BM for John Warshow

John Warshow

AVAILABILITY: This purchase arrangement is available to any self generation facility.

CUSTOMER CHARGES: The Company shall install, maintain and read the metering equipment necessary to measure the flow of energy from the facility to the Company. If the facility owns the necessary metering equipment and relieves the Company of all investment, the charge for installation and maintenance shall be the actual cost, and the monthly customer charge for reading and handling shall be $3.00. If the Company owns the metering equipment, the monthly customer charge shall be the capitalized cost of the metering equipment times 2.5% plus the reading and handling charge of $3.00.

PURCHASE OF CUSTOMER GENERATION: The Company will purchase electric energy supplied by the facility in accordance with either of the following two alternatives:

Alternative A: If a time differentiated meter is installed, the Company will determine the energy payment as the sum of delivered energy for each hour in the billing period times the appropriate hourly Connecticut ISO-NE Wholesale Electric Market Real-Time Locational Marginal Price ("RT-LMP") clearing price for such hour. The hourly prices shall be appropriately adjusted to reflect line loss savings. Under this alternative the Customer shall install and maintain communication technology that provides remote access for the Company to read the meter(s) at all times. The location of such facilities shall be at the sole discretion of the Company; however, the Company shall consult with the customer regarding the location of these facilities. The Customer will choose to either provide a dedicated direct dial analog phone line(s), or other mutually agreed communication technology that is compatible with the Company's meter data collection systems. The interconnection of communications equipment that provides for remote meter reading shall be within reasonable proximity of the electric meter as determined by the Company's specifications and is the sole responsibility of the Customer. The Customer shall be the owner of all telephone lines or the remote communications technology and shall maintain them in operable condition at all times. The Company will be responsible for the installation and maintenance of the connection between the Company meter(s) and the Customer's communication system.

Alternative B: If no time differentiated meter is installed, all electric energy will be purchased at the appropriate RT-LMP average clearing price over the billing period. The average price for the billing period shall be appropriately adjusted to reflect line loss savings.

MARKET-CLEARING PRICES: In accordance with Standard Market Design, the RT-LMP for Connecticut is the basis for the market-clearing price. The market-clearing price for Generation recognized in the ISO-NE settlement system is the appropriate Node. The market-clearing price for all other generation is the Connecticut Zone. In the future, LMP may be replaced with another market mechanism. If this occurs, Rate 980 will make payments based on the subsequent market mechanism for calculating the market-clearing price.

THE CONNECTICUT LIGHT AND POWER COMPANY

ADJUSTMENT IN MARKET CLEARING PRICE FOR LINE LOSS SAVINGS: The purchase voltage shall be determined in accordance with the voltage level at which interconnection is made with the Company's system. The voltage level at which purchases are made shall be the level at which sales are made by the Company to the customer, unless otherwise agreed by the Company. Purchases at Transmission voltage levels of 69 kV or higher are paid at the appropriate RT-LMP market-clearing price. For purchases at voltage levels less than 69 kV the appropriate RT-LMP market-clearing prices will be increased by the percentage shown below:

	Alternative A (hourly metering)		Alternative B
Purchase Voltage	On-Peak Hrs.	Off-Peak Hrs.	No time differential meter
Bulk Substation	0.50%	0.34%	0.42%
Primary Distribution	4.38%	2.89%	3.60%
Secondary Distribution	7.13%	4.59%	5.80%

On-Peak Hours: 7 a.m. to 11 p.m. Eastern Standard Time, weekdays.
Off-Peak Hours: All other hours.

Secondary Distribution is defined as purchase voltages below 2.4 kV. All other connections to the distribution system will be Primary Distribution. Customers connected through a bulk substation or at voltages of 69 kV or higher are not considered Distribution.

OWNERSHIP OF CAPACITY RIGHTS: There shall be no capacity payment under any alternative. The Company shall retain the capacity rights for generating units up to the capacity that has been subsidized by ratepayers through the monetary grant process approved in the Decision dated March 27, 2006, in Docket No. 05-07-16. All base load customer-side Distributed Generation ("DG") projects including combined heat and power projects that receive a monetary grant are required to transfer the capacity rights to the Company for fifteen (15) years from the date the facility begins operation.

The Customer shall retain capacity rights if one of the following conditions exists:

1.) The project is an emergency generator; or

2.) <u>All</u> of the following three criteria are met: (1) the generating unit is not under a long-term power purchase contract whose original term is or was one year or longer; (2) <u>the generating unit has a settlement account with ISO-NE</u>; and (3) the generating unit is entitled to the capacity in excess of that subsidized by ratepayers through the monetary grant process. In the unique and limited situations where the generating unit is entitled to the capacity in excess of that subsidized by the ratepayers through the monetary grant process, the Company will work with the generating facility to ensure that any capacity value retained by the generating unit is properly calculated, claimed and allocated.

RENEWABLE ENERGY CERTIFICATES ("RECs") OWNERSHIP: The Company shall retain ownership of RECs for power purchases made pursuant to a long-term purchase power contract which uses Rate 980 as a pricing mechanism for some or all of the output to be purchased under the contract, or if the contract provides for the Company to retain ownership of RECs. A long-term contract is any contract for power purchase whose original term is or was one year or longer. DG projects that are not under a long-term contract, including those that receive monetary grants, will retain the RECs associated with their generation unit.

DETERMINATION OF THE COMPANY'S PURCHASE: Where the metering facilities are on the facility's side of the transformer, the metered energy shall be reduced by 0.36% to determine the Company's purchase.

TERM OF CONTRACT: All base load customer-side DG capacity that receives a monetary grant through the monetary grant process approved in the Decision dated March 27, 2006, in Docket No. 05-07-16 must take service under Rate 980 for a minimum period of fifteen (15) years. For a generating unit that does not receive a monetary grant and where the Customer owns the metering equipment, there will be no term of contract; otherwise, the term of contract shall be for one year and thereafter until the Company shall have received not less than one month's written notice of termination from the facility.

INTERRUPTION OF PURCHASES: The Company reserves the right, upon 48 hours prior notice where practicable, to interrupt purchases and to refuse to purchase energy at times of system emergency or severe operational circumstances in accordance with any applicable New England Power Pool (NEPOOL), Independent System Operator New England (ISO-NE) and Northeast Power Coordinating Council (NPCC) operating procedures.